Testimony in opposition to H.B. No. 5632 (COMM) AN ACT CONCERNING THE OPERATION OF A NURSING HOME INVOLVED IN LABOR DISPUTE.

Good afternoon Senator Prague, Representative Zalaski and to the members of the Labor and Public Employees Committee. My name is Matthew V. Barrett and I am Executive. Vice President of the Connecticut Association of Health Care Facilities (CAHCF), our state's 115-member association of proprietary and not-for-profit nursing homes. I am here to testify in ***opposition to H.B. No. 5632 (COMM) AN ACT CONCERNING THE OPERATION OF A NURSING HOME INVOLVED IN LABOR DISPUTE.***

Committee Bill No. 5632, if adopted, would mandate the Superior Court take control of a privately owned or nonprofit nursing home whenever there is a labor dispute lasting more than four months between the nursing home and its collective bargaining employees. Our association is opposed to the bill for several reasons: (1) the bill would implement an unwarranted taking of property in violation of protected rights; (2) it is in conflict with, and thus, is preempted by federal labor law, and (3) it will ititiate finanacial instability at the facility which may jeoparidize the health and safety of the nursing home residents. In short, our members are very concerned that the bill effectively means they will lose their nursing homes to the courts if they do not satisfy all labor demands within four months of a labor action.

The exising receivership law, found at Section 19a-543 of the Connecticut General Statutes, is an extraordinary authority of the Superior Court. It allows the court to take operational control of both a privately owned or not-for-profit nursing home. This authority is analogous to that of a Chapter 7 bankruptcy under federal law insofar as the owner loses all rights and operational control of the the facility. The appointed receiver can close the facility or sell it. The original owner never regains any ownership rights. The current receivership law, is quite clear that the extraordinary government intervention, which receivership represents, should only be triggered under very limited circumstance becuase of these dramatic consequences.

Section 19a-543 provides that there must be a nexus to the facilities' ability to properly care for its residents in order to warrant a receivership. This threshhold can only be acheived upon the finding of the court that care and safety of the nursing home residents is compromised. Any number of facts can be important in the court's determination, such as the evidence that the faciliy intends to close without arranging for relocation of patients, or evidence of financial instability which rises to the level of compromised patient care, or perhaps public health code violations giving rise to a finding of jeopordized patient care.

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Committee Bill No. 5632 is a significant depature from the current law becuase it establishes that a labor dispute alone lasting more than four months is sufficient itself to trigger the court's intervention and the taking of the property. This is materially different from the existing reasons for a receivership in that the protection of patients is no longer a a required finding. Indeed, a for profit or not-for-profit nursing home could lose control of its facility while providing high quality care to its residents and without any financial concerns. Moreover, under the existing state law, the Superior Court can impose a receivership on a nursing home where the employees are on strike if patient care is jeopardized and one of the existing grounds for a receivership is met.

In addition, the National Labor Relations Act (NLRA) generally preempts state law and the policy of the NLRA to encourage collective bargaining and to allow the negotiating parties to work out their disputes. The imposition of a receiver solely because of the existence of a labor dispute would seem to be in direct conflict with federal labor law.

As well, the notion that the court takeover of a nursing home could be achieved by virtue of a labor dispute alone would dangerously undermine the financial infrastructure of the facility. Such a policy would dramatically increase the risks that banking institutions, and other lenders, such as real estatate inventsment trusts, now take when agreeing to financing terms for Connecticut nursing homes, especially Connecticut unionized nursing homes.

Finally, regarding the provision concerning the involvement of the Board of Mediation and Arbitration (the "Board"), this duplicates a required notice by the NLRA within 30 days after a party to a collective bargaining agreement (CBA), notified the other party that it wishes to terminate or modify the CBA. See 29 U.S.C. 158 (d) (3). If the parties wanted to use the Board, or the Federal Mediation and Conciliation Service (FMCS), they would already have these agencies involved under the current federal scheme.

For these reasons, we urge the committee to take no action on Committee Bill No. 5632. Thank you and I would be happy to answer any questions you may have.